

Proceeding by the Department of Telecommunications
and Energy on it own Motion to Implement the
Requirements of the Federal Communications
Commission's Triennial Review Order Regarding
Switching for Mass Market Customers

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. § 1.00 et seq., the Procedural Rules of the Department of Telecommunications and Energy (“Department”). In addition, the following ground rules shall apply to the conduct of the proceedings in this matter:

The original of all documents filed with the Department must be filed with Mary Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, 2nd Floor, Boston, MA 02110. In addition, copies of all documents that are filed with the Department, including letters, comments, pleadings and briefs, but excluding discovery and responses to discovery, must be submitted to the Department in electronic format by e-mail attachment to dte.efiling@state.ma.us and Paula.Foley@state.ma.us. Discovery and responses to discovery, excluding confidential materials, must also be provided in electronic format by e-mail attachment to Paula.Foley@state.ma.us. The text of the e-mail must specify: (1) an easily identifiable case caption; (2) the docket number (D.T.E. 03-60); (3) the name of the person or company submitting the filing; (4) a brief descriptive title of the document (e.g., Comments). The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either WordPerfect (naming the document with a “.wpd” suffix) or in Microsoft Word (naming the document with a “.doc” suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department’s website, <http://www.mass.gov/dpu>.

The Hearing Officer will communicate with the parties primarily via e-mail, with paper to follow where appropriate.

2. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and request for documents (see Mass. R. Civ. P. 33, 34). Responses to information requests will not be part of the record unless marked and admitted into evidence.

Parties shall make a good faith effort to provide responses to information requests within seven (7) business days of receipt of the request, unless otherwise indicated by the Department. Responses should be provided on a “rolling” basis. This time for responses to information requests shall not apply where the established procedural schedule sets a different time. The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance.

Information requests shall be deemed continuing so as to require further supplemental responses if a party or its witnesses receive or generate additional information within the scope of the requests between the time of the original request and the close of the record in the proceeding.

For purposes of discovery, a “document” shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

With regard to bulk responses (i.e., responses in excess of 100 pages), parties seeking copies of such responses must make an affirmative request to the responding party.

Verizon shall provide to the Department and to all parties a list, updated on a weekly basis, of all information requests issued; where a response has been provided, Verizon shall indicate the date of each response, and the name of the company and individual responding.

3. Exchange of Materials

The parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission (“FAX”), or other speedy means of delivery. Parties shall also exchange all materials electronically, where feasible to do so. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material. Where material is delivered by means of FAX, a follow-up copy of the material must be otherwise delivered (use of mail delivery may be appropriate).

Where information requests are sent to a party by means of FAX, the FAX must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the timing to the response to the information request.

4. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject matter precludes a responsive answer by the witness in the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or in part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth business day following the day on which the request is made. Objections to the record requests shall be made at the time the request is made, and in no event later than the end of the next Department working day.

5. Protected Material

Competitively sensitive material is protected by a Protective Order adopted in this proceeding.

6. Format of Document Filings

All documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing, indicating if the document is a revision or supplement to a previous filing and noting the distribution of copies. All discovery documents must be filed according to the instructions in sections 10 and 11, below.

Responses to information and record requests shall contain the following information: (1) set and question number, (2) recitation of request, (3) identification of person who will support the response, and (4) whether the response revises or supplements an earlier response.

7. Offering of Exhibits

The proponent of an exhibit must offer the Department seven (7) bench copies of the proposed exhibit, with one (1) of those being standard three-holed punched for the Hearing Officer. Nonconforming documents will not be marked. Where material exceeding 25 pages is offered for marking and such material is already in the possession of all parties (e.g., information request responses), the proponent may, no

later than 9:00 a.m. on the day the material is to be offered for marking, inform all parties and the Hearing Officer of the intended use of such materials. Nonetheless, the proponent of any such document must provide the Hearing Officer with a three-hole punched copy for marking.

If only part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, than that party must enter the missing part(s) into the record.

Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number, (2) the date marked, and (3) a description of the exhibit.

8. Late-Filed Exhibits

Exhibits offered after the close of hearings, if objected to by any party, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal. Late-filed exhibits must be accompanied by a motion to reopen the record and supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence.

9. Exhibit Format

Documents submitted as exhibits shall be premarked by the parties using the following format, in the upper right-hand corner of each exhibit:

D.T.E. 03-60
Exhibit _____
Date _____
H.O. Foley

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before a document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the

numbers in some way that differentiates the additions from the preexisting text and should identify his method of addition on the record upon presentation for marking.

Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

10. Number of Copies

The Department requires copies to be filed in the following numbers:

Prefiled Testimony – 1 original and 8 copies

Information Requests – 1 original and 8 copies

Responses to Information Requests – 1 original and 8 copies

Responses to Record Requests – 1 original and 8 copies

Bulk Responses (100 pages or more) – 1 original and 1 copy

Pleadings, Briefs, Motions, Memoranda – 1 original and 8 copies

Confidential Materials – 1 original and 1 copy

11. Address of Filings

The original of all filings must be filed with Mary Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, 2nd Floor, Boston MA 02110. The original of all documents filed with the Department must be filed by the close of business (5:00 p.m.) on the respective due date.

Two (2) copies of all non-bulk filings, one (1) copy of bulk filings, and one (1) copy of confidential materials must be submitted to Paula Foley, Hearing Officer.

Where eight (8) copies are required under these ground rules, two (2) copies must be sent to Paula Foley, Hearing Officer, and one (1) copy each must be submitted to the following: Mike Isenberg, Director, Telecommunications Division; April Mulqueen, Assistant Director, Telecommunications Division; Berhane Adhanom, Telecom Analyst; Asish Shrestha, Telecom Analyst; Deb Conklin, Telecom Analyst; and Peter Allen, Telecom Analyst. When additional copies of a filing are required, all extra copies should be sent to Paula Foley, Hearing Officer.

12. Communications with the Department

All communications by the parties with the Department staff should be made through the Hearing Officer.

13. Hearing Arrangements

Evidentiary hearings will be conducted at the offices of the Department at One South Station, Boston, MA. Those hearings will begin each day at 10:00 a.m., according to the established schedule, unless otherwise indicated by the Hearing Officer.

Adjustments to the hearing arrangements may be made at the discretion of the Hearing Officer.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown. The Department may revise the ground rules during the course of the proceeding.

10/17/03
Date

_____/s/_____
Paula Foley
Hearing Officer